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Attorneys for Defendants  
D'Annunzio Distribution, Inc.  
D'Annunzio Showcase Dealers, Inc.,  
Arthur D'Annunzio and Philip  
D'Annunzio

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Judge Berman

CAPSTONE BUSINESS CREDIT, LLC  
and CAPSTONE CAPITAL GROUP I,  
LLC,

CASE NO.

09 CV 7036

Plaintiffs,

v.

D'ANNUNZIO DISTRIBUTION, INC.,  
D'ANNUNZIO SHOWCASE DEALERS,  
INC., ARTHUR D'D'ANNUNZIO and  
PHILIP D'ANNUNZIO,

Defendants

**NOTICE OF REMOVAL**

To: United States District Court  
Southern District of New York

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,  
Defendants D'Annunzio Distribution, Inc., D'Annunzio Showcase Dealers, Inc., Arthur  
D'Annunzio and Philip D'Annunzio ("D'Annunzio Group") hereby removes the action

captioned Capstone Business Credit, LLC and Capstone Capital Group, I, Inc v. D'Annunzio Distribution Inc., et al., filed August 7, 2009, (as of removal date Index No. issued but unavailable), from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). As grounds for this removal, the D'Annunzio Group shows the Court as follows:

**BACKGROUND**

1. Plaintiffs, Capstone Business Credit, LLC and Capstone Capital Group I, LLC, ("Capstone") filed this lawsuit on August 7, 2009, in the Supreme Court of the State of New York, County of New York. The D'Annunzio Group voluntarily accepted service of the Complaint on August 7, 2009. Exhibit A. (the "State Court Action").

2. Capstone asserts the D'Annunzio Group breached obligations arising from trade financing and factoring agreements resulting in an outstanding debt of \$24,120,185.00, plus accruing interest. (Compl. ¶ 1-10).

3. This Court has subject matter jurisdiction over this action and all claims asserted against Defendants pursuant to 28 U.S.C. § 1332(a).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a), because the United States District Court for the Southern District of New York, is the federal judicial district and division embracing the Supreme Court of the State of New York, County of New York, where the State Court Action was filed originally.

5. This Notice of Removal is timely filed in compliance with 28 U.S.C. § 1446(b), because it is filed within thirty days after August 7, 2009 when service of process was accepted by the D'Annunzio Group.

6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served on the D'Annunzio Group in the State Court Action are attached to this Notice as Exhibit B.

7. Pursuant to 28 U.S.C. § 1446(d), the D'Annunzio Group has filed this Notice with this Court, is serving a copy of this Notice upon counsel for all appearing parties, and is filing a copy in the Supreme Court of the State of New York, County of New York.

**DIVERSITY JURISDICTION – COMPLETE DIVERSITY**

8. Under 28 U.S.C. § 1332(a), federal courts have original jurisdiction over all civil actions where the action is between citizens of different States and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. This action satisfies all requirements for federal jurisdiction under 28 U.S.C. § 1332(a).

9. This action is between corporate entities and individuals among who there is complete diversity as defined by Federal Law.

10. Capstone Business Credit, LLC is a Delaware limited liability company with its principal place of business located at 1350 Avenue of the Americas, 24<sup>th</sup> Floor New York, New York 10019. (Compl. ¶ 11).

11. Capstone Capital Group I, LLC is a Delaware limited liability company with its principal place of business located at 1350 Avenue of the Americas, 24<sup>th</sup> Floor, New York, New York that regularly transacts and solicits business with the State of New York. (Compl. ¶ 15).

12. D'Annunzio Distribution, Inc., is and at the time the action was filed, a privately held corporate entity organized and existing under the laws of New Jersey with its principal place of business at 60G Commerce Way, Totowa, New Jersey. (Compl. ¶ 12).

13. D'Annunzio Showcase Dealers, Inc., is and at the time the action was filed, a corporate entity organized and existing under the laws of New Jersey with its principal place of business at 60G Totowa, New Jersey. (Compl. ¶ 13).

14. Arthur D'Annunzio is and at the time of the action was filed, a citizen of the State of New Jersey residing at 62 Long Hill Road, Oakland, New Jersey. (Compl. ¶ 18).

15. Philip D'Annunzio is and at the time of the action was filed, a citizen of the State of New Jersey residing at 20 Parkside Court, Wayne, New Jersey. (Compl. ¶ 19).

16. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Capstone asserts that the D'Annunzio Group owes an amount of \$24,120,185, plus accruing interest. (Compl. ¶ 7). Based upon these demands for damages, the amount in controversy requirement is satisfied. See 28 U.S.C. § 1332(a).

17. Because 28 U.S.C. § 1332(a) confers federal subject matter jurisdiction over this action, removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441.

WHEREFORE, for the reasons set forth above, the D'Annunzio Group prays that this Notice of Removal be filed; that said State Court Action in Supreme Court of the State of New York, County of New York be removed to and proceed in this Court; that no further proceedings be had in said case in the Supreme Court of the State of New York, County of New York; and that this Court assume full jurisdiction over this action as provided by law.

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Arthur D'Annunzio and Philip D'Annunzio

AFFIDAVIT OF SERVICE BY MAIL

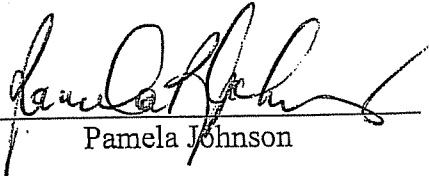
STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF NEW YORK    )

The undersigned being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 and resides in Kings County. That on the 10<sup>th</sup> day of August, 2009, she served via Overnight Mail the within Notice of Removal with Exhibits, Corporate Disclosure Statement, Civil Cover Sheet and Notice of Filing of Notice of Removal upon:


Scott A. Brody, Esq.  
Brody, O'Connor, O'Connor, Esqs.  
111 John Street, Suite 900  
New York, NY 10038

Bruce M. Sabados, Esq.  
Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022-2585

By depositing a true copy of same securely enclosed in a post paid wrapper, in an official depository under the exclusive care and custody of Federal Express within the State of New York.

  
Pamela Johnson

Sworn to before me this  
10<sup>th</sup> day of August, 2009

  
Notary Public

3540181  
RHONDA PITT  
Commissioner of Deeds  
City of New York - No. 2-11023  
Commission Expires December 1, 2010